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Submission to Department of Local Government on Local Government Act 1995 review.

31st January 2018

Dear Sir/Madam

Please accept the following submission in response to Department of Local Government, Sport and Cultural Industries Local Government Act 1995 Phase 1: Consultation Paper.

Disclosure:

I am a former councillor of the Town of Victoria Park (2013-2017).

Submission:

Local Government is an instrument of the State Parliament. Local Government was created by the State Parliament and given a local board structure to provide services to a defined precinct. In fact the earlier versions of Councils were called Roads Boards because that was their primary purpose, to co-ordinate the construction and maintenance of local roads around the houses within their part of the settlement.

Local Government does not have any State-hood. It is not like the States of Australia that are, in effect, separate countries that have together created a Federation. States were not created by nor are they beholden to the Federation. In contrast to the State/Federal relationship, Local Councils are a mechanism by which the State delivers local services. Local Councils are not a political organisation. They have no power over the State. Within the Federation each State has direct representation via the Senate. Each State has 12 Senators forming the Upper House. Local Government has NO representation in the States upper house – it is merely an instrument of the State.

The Local Government act 1995 gives Local Government considerable autonomy in its decision making and it is a widely held view that the best decisions are those made by the person or people who are closest to the problem or those most affected by the decision. To the degree that Local Government makes decisions on local issues this view holds true, however, where Local Government strays into subject matters outside of its local district the prospect of decisions becoming more political in nature is more likely and these incursions often lead to additional and unnecessary expense to ratepayers of the District.

The Alan Robson Metropolitan Local Government Review in 2012 made mention of the need to more clearly define the roles of the three levels of Government in order to improve efficiency and accountability and Robsons phrase that “Form Follows Function” is a short, sharp and clear rendition of his entire report that was unfortunately lost on the previous Government when they proceeded to alter the “Form” of the Local Government sector without first clearly identifying its “Function”. My hope is that this current review will address the Function of Local

Government as this is the key to achieving the reforms that are required in order to meet the community expectation for accountability and performance.

Phase one of the current review deals primarily with the roles and responsibilities of the key players engaged in Local Government; the Councillors and the CEO. Whilst the CEO is generally someone with extensive local Government experience and is well credentialed academically, many Councillors are not. Councillors are not seasoned professionals and many do not possess political skills. By and large they are ordinary members of society. The barriers to entry into Local Government for an elected member is very low. Cognitive skills and learning abilities are not tested. Unlike the majority of State and Federal politicians who are supported by a well organised political party, most Local Government Councillors are independent and therefore do not have a support base to help evaluate policies and are lacking the learned experience that is passed on over decades. Unlike State and Federal politicians, Local Councillors do not have a funded electoral office and research staff to assist them. They are left to their own devices and skills and even Councillors with a few years under their belt are no match for the politically astute public servants that are meant to serve them. It is with this understanding that the need to balance autonomy with performance should be looked at.

Defining the roles of council and administration:

Under the current Act the councils role is described as —

- *governs the local government's affairs; and*
- *is responsible for the performance of the local government's functions, which includes (although is not limited to):*
 - *overseeing the allocation of the local government's finances and resources; and*
 - *determining the local government's policies.*

In practise this role is not being effectively met with many Councils accepting without question the **substantial expenditure** incurred each month by the Local Government and Councillors are expected to take responsibility for these expenses without adequate information being provided. On many occasions as a Councillor and a few occasions since, I have exposed incorrectly described expenditure through questioning the monthly accounts, however, on **every** occasion my questions were met with disdain by the administration and I was encouraged to refrain from “embarrassing “ the staff by questioning the accounts. As a recent example I requested further explanation on sixteen expenditure items. Of the sixteen questioned, six items representing 38% had to be corrected as the descriptions given were totally incorrect and most of the others had to have their descriptions expanded so that the reader could understand what the expenditure was for. It is very unlikely that these errors would be picked up by an audit and so they would go undetected and unfortunately, most Councillors are reluctant to question the accounts as they feel it will impinge on their friendship with the staff and so it is not unless

an enquiry is launched do these discrepancies ever become apparent. It is very obvious that Councillors generally do not understand the responsibility that they assume when they raise their hand to approve the accounts each month.

Policy development in many councils is carried out entirely by staff with little or no input from elected members. Elected members are put at a disadvantage when a policy document is presented to them at a Council Meeting for adoption where they have little time to digest or understand the implications of the policy in the few days before a decision is required and inevitably the policies that are put in place are those that are determined by the un-elected administration.

Although the two functions, finance and policy development, are already defined in the current act I feel there is a requirement to strengthen these two key areas by both training and enforcement to ensure that the Council is performing these roles effectively.

Everything else that the Local Government does hinges on these two areas of responsibility, Finance and Policy.

The role of an individual councillor includes:

- *representing the interests of electors, ratepayers and residents of the district;*
- *providing leadership and guidance to the community in the district;*
- *facilitating communication between the community and the council;*
- *participating in the local government's decision-making processes at council and committee meetings; and*
- *performing such other functions as are given to a councillor by the Act or any other written law.*

Councillor's role as providing leadership is interpreted by some to mean that they can promote their own agenda in the name of leadership, for example gay rights, refugee issues, social issues.

Increasingly individuals and even political parties with a social agenda to pursue will seek election to a local government council in order to use the Local Governments substantial resources to promote their cause.

Lack of clear definition of the function of Local Government has allowed individuals and groups to use the Local Government as a political soap box and instances of Local Governments lobbying State and Federal Governments and speaking out on divisive issues is becoming a common occurrence. Recent unilateral action by some Councils on Australia Day activities and involvement in the Gay Marriage debate and criticising Federal Government border protection policies are examples of where Local Government has gone beyond the community's expectation. Councillors and Mayors are elected to look after the local district and for them to make political statements on Federal and State issues is somewhat presumptuous and unwarranted. Citizens elect representatives to State and Federal Parliaments to represent them in these forums. Citizens do not provide any mandate to local Councillors to represent them on State and Federal issues and many ratepayers are appalled by, but powerless to prevent, this activity.

To better meet the community's expectations, the phrase in the role description about providing leadership should be tightened up to prevent incursions into other political areas. A possible suggestion is to include the words "on local issues" such that the role description would read "*providing leadership and guidance on local issues to the community in the district*"

One of the most important functions of a Councillor is defined as "*participating in the local government's **decision-making processes** at council and committee meetings*" and yet there is little incentive for an individual councillor to attend to this role diligently. In most Councils there are only eleven Council meetings held each year and regardless of the number of workshops or informal discussions that occur, the only time a Councillor can fulfil his or her role to represent the interests of electors is at these eleven Council meetings where the decisions are made. The expectation of the community is that if someone is going to run for a position on Council that they will be prepared to make the effort required to attend meetings. Under the current regime a Councillor or Mayor can be absent for many meetings without penalty and through their absence they have abdicated their decision making to others. A simple way to address this is to introduce a regulation that relates member payments to meeting attendance instead of the currently available method where Councils can decide to pay a lump sum each year regardless of attendance.

The mayor or president has the following additional roles:

- *presiding at meetings in accordance with the Act;*
- *providing leadership and guidance to the community in the district;*
- *carrying out civic and ceremonial duties on behalf of the local government;*
- *speaking on behalf of the local government;*
- *performing such other functions as are given to the mayor or president by the Act or any other written law; and*
- *liaising with the CEO on the local government's affairs and the performance of its functions.*

The CEO's functions under the Act are to:

- *advise the council in relation to the functions of a local government under this Act and other written laws;*
- *ensure that advice and information is available to the council so that informed decisions can be made;*
- *cause council decisions to be implemented;*
- *manage the day to day operations of the local government;*
- *liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;*
- *speak on behalf of the local government if the mayor or president agrees;*
- *be responsible for the employment, management, supervision, direction and dismissal of other employees;*
- *ensure that records and documents of the local government are properly kept for the purposes of the Act and any other written law; and*

- *perform any other function specified or delegated by the local government or imposed under the Act or any other written law as a function to be performed by the CEO.*

The consultation paper, in describing the CEOs functions under the act, makes comment that *“Despite this, tension still arises within local governments. This appears to be due to a lack of understanding of the separation of powers between the council and the administration, or deliberate attempts to act outside this separation”*.

From my experience as a Councillor it is rare for the Council to meet solely with the CEO and on almost every occasion that Council meets for a Council Meeting, a briefing session, a workshop or any Council function the senior staff are always present. This may explain why Councillors become drawn into administrative functions through their familiarity with staff members and the inevitable discussions that occur at both official and social functions. The number of senior staff present at these meetings is significant and it is quite apparent to me that the separation of powers is often distorted with elected members influencing staff and staff, often seasoned public servants, using their knowledge and resources to influence individual elected members. Often reports from staff are written with a political bias designed to influence decisions.

Public service staff do not sit in the State and Federal Parliament and yet they are there in the Local Council Chamber influencing elected members. Why?

Limiting the interactions of the Council to meeting only with the CEO may provide a way to cause Councillors and Council to become more strategic in their deliberations. Removing staff from Council meetings will have a significant effect on the perception and expectation of the general public as they will clearly see that the Council is not deliberating over a crack in a footpath but rather they are making decisions on strategic issues.

The consultation paper identifies that *“All local governments in Western Australia provide **core services** including waste, roads, parks, playgrounds and gardens, as well as having statutory responsibilities in planning, development approvals, public health and various licencing requirements.”* It then goes on to suggest that *“In response to community expectations, some local governments also provide **other services** such as community centres, libraries, swimming pools, gyms, child care, seniors and youth programs, environmental and land care programs, health programs, local infrastructure including marinas and airports, as well as programs to support tourism, local events and businesses”*.

From my experience as Councillor these additional services are not necessarily a response to community expectation and are often driven by a personal agenda or misunderstanding of the role of Local Government by Elected members who think they have to continually create new projects or services, operating more like a P&C fundraising committee than a Local Council. All of the services a Local Government provides are funded by ratepayers and should be determined through a rigorous cost benefit analysis rather than viewed as compulsory ratepayer philanthropy. Most ratepayers when left to their own devices are quite generous and quite capable of providing monetary and in kind support to others and do not appreciate the Local

Council increasing their rates in order for a few Councillors to decide who to give their hard earned money away to.

CEO recruitment and performance review methodology requires improvement. Elected members are too chummy with the CEO and often ill equipped to successfully evaluate the CEOs performance with little or no experience in setting meaningful KPIs. In my former Council the KPIs were determined by the CEO and the Council asked to endorse them and so there was little chance that the CEO would not achieve these KPIs that he himself had proposed. The common practise used to recruit CEOs is to bring in a consultant from an agency specialising in Local Government appointments. These agencies are generally staffed by or set up by former local Government employees and so there is an element of nepotism in the recommendations with very little likelihood of a candidate from outside of Local Government circles being chosen and so no new blood is brought into the cosy Local Government club.

In the same way that local Government audits will soon be undertaken by the State Auditor General's office, I think there is some merit in having the Department of Local Government or the Public Sector Commission involved in the recruitment and the performance appraisal roles of Local Councils to provide a consistent level of oversight in this area. The CEO wields significant power and the Council must be in a position to hold him/her to account no matter what board level experience the individual Council members may or may not have.

Training:

Councillors come from all walks of life. The barrier to entry into Local Government is very low and in many cases elections are uncontested meaning that anyone who can write their name on an application form can qualify to become a Councillor. Training should be mandatory for all Councillors. When I was elected onto Council I was astounded that the existing Councillors, some of whom had served for more than twenty years, did not fully understand their role as defined in the Local Government Act, especially in regards to the important function of policy development with this function being carried out by the CEO and his staff.

With four year terms it can easily be argued that refreshing your training can only benefit yourself and the Council you serve and I recommend that training requirements apply to all elected members no matter how long they have been on Council. As most Councillors are engaged in full time employment elsewhere it would be difficult to persuade them to attend training venues and therefore I suggest that online training be provided. Online training is likely to be the most cost effective option and the training can be packaged into self- paced modules.

Voluntary training has not worked in the past and there is no reason to believe that this will improve. I suggest that a financial incentive be applied by way of linking Elected Member payments with their training progress. For example a member would be required to complete one training module per quarter and the members sitting fees would be withheld until the training program was up to date. If a member failed to complete a module by the third month then their sitting fee payment will be delayed until such time as the module is completed. It is imperative that all elected members have the necessary knowledge to perform in their role and

compulsory training is the only way to ensure that all members have that knowledge no matter their previous experience or background.

Codes of Conduct:

As they stand currently, codes of conduct serve little purpose as they are largely unenforceable and penalties for breaches are insignificant.

Regulation to address basic mandatory requirements covering Elected Members and staff with substantial enforceable penalties should be put in place. Locally enforceable codes of conduct are unnecessary, ineffective and are often used to manipulate behaviour and influence decisions.

In regards to reducing the time frame in which complaints can be made, I do not support any reduction to the existing 2 years. Failure to disclose interest or misuse of confidential information may go undetected for some time. A shorter time frame will make it easier for a perpetrator to keep things quiet to avoid scrutiny until the time limit expires.

Confidentiality:

28) **Is it appropriate to require the existence and details of a complaint to remain confidential until the matter is resolved?** No, it should be at the discretion of either the complainant or the person subject of the complaint to discuss the issue with whomever they see fit.

Why? Transparency and to reduce the likelihood of politically motivated complaints. Knowing that the details of a complaint could be known widely would give pause to someone initiating a vexatious complaint designed to unsettle another elected member.

In regards to the establishment of **Sector conduct review committees**, I feel these would add complexity and provide more opportunity for complaints to be insufficiently dealt with. There is already a degree of obfuscation with CEOs referring complainants to the Department and Departmental staff referring complainants to their local CEO, as a delaying tactic with the intention of frustrating or not dealing with a complaint. Adding another committee will make that situation worse. A single point of contact for complaints should be established and if that requires more resources for the standards panel or the setting up of a second panel if the current one cannot deal with the work load then this would be preferable to adding another layer into the complaints process.

The current complaints system does not **support ordinary citizens** when they attempt to make a complaint and they are often dissuaded from lodging a complaint by the legalistic requirements of the process. The department should be required to provide assistance to ordinary ratepayers who may have a legitimate complaint but are not intimately knowledgeable of the wording of the Act or do not fully understand some of the legalese used.

Decisions of the standards panel should be reviewed on **appeal** from either the complainant or the person subject of the complaint.

Council meetings is where elected members make decisions and it would be inappropriate for the standards panel to have the **power to prohibit or limit** an elected members attendance as it would interfere with his/her ability to fulfil the role that they were elected to do.

Penalties should be limited to being of a financial nature.

51) Do you support the tabling of the decision report at the Ordinary Council Meeting? Why or why not?

Yes I do support the public reporting of decisions of the standards panel for reasons of transparency.

Elected member interests:

As community groups are often in receipt of significant Council assets and funds it is appropriate that elected members who are members of these groups declare an interest and avoid participating in any decisions that may directly impact that group.

In conclusion I believe it has to be recognised that Local Government is a very large industry that is not exposed to market pressures and therefore the only real influence on it to be efficient and to act prudently comes from the elected members.

It is a natural assumption that a business that is not in tune with its customers and not delivering the goods that its customers want will perish. A business can only remain profitable if it responds adequately to the forces of the market that it operates within and has to adjust its spending to suit the economic times. Governments too are exposed to market forces. When the economy contracts there are less tax receipts, less royalties, less consumption and therefore GST revenue, less stamp duty as people buy and sell less and at lower prices and therefore State and Federal Governments have to respond to these economic forces and trim their expenditure, reduce some services and find ways to do more with less, in other words become more efficient.

Local Government is not exposed to the economy.

Local Government is funded largely by rates and whatever the Council determines the budget to be, the ratepayer has to pay it even to the point of default where the local Government has the power to seize and sell property.

The cyclical economic downturn that causes State and Federal Governments to clean house and flush out some of the old tired and unnecessary programs and refresh itself never occurs in Local Government and instead it goes on year after year adding more and more layers of inefficiencies with the result that most of us will be faced with year after year of above inflation rate increases with no relief and no commensurate improvement in services.

There is only one thing that stands in the way of ever expanding Local Government budgets and that is the Council. Unfortunately, as alluded to earlier in this submission, Local

Government Councillors are the least experienced politicians in the system, and with the least amount of support. They are no match for the formidable experience and astuteness of the public servants who are the ones really calling the shots. This is not to denigrate public servants, they play an important if not vital role and Local Government would not function without them but unlike elected members they, the public servants, have no one to answer to. They do not face elections and they work in an industry where they can never go out of business no matter what they do. This coupled with the fact that they are not financially constrained by market forces and the only people they have to keep happy is a handful of community members who have to work through a complex governance structure to make any meaningful change, a structure more or less in the control of the staff and you can see why Local Government is drifting further and further away from its core responsibilities and becoming increasingly expensive.

Local Government would better meet community expectations of standards and performance if it is either, exposed to prevailing economic forces to encourage it to focus more on core business or, if the Councillors have greater capacity to control the beast and set a more meaningful strategic direction for the organisation.

Changing the way Local Government is financed is unlikely to be easy or even desirable and creating a system where only experienced, financially savvy board members are elected is counter to the democratic system that we enjoy and so the only real option is to change the rules by which Councils and Councillors operate.

- Mandatory Training
- Clearly defining the role of Local Government
- Professional support to Councils in the selection and performance appraisal of CEOs
- Increased transparency – open the doors and let the public in, no secret agendas.
- Reduce Councillor interaction with staff other than the CEO

If I was to choose just one of the points above, it would be the second point that was eloquently made by Alan Robson “FORM FOLLOWS FUNCTION”

Clearly define the role of Local Government, ring fence it and tell them to stay on their side of the fence, concentrate on the job at hand and leave State and Federal issues to those elected to that responsibility.

As a closing observation, there is a greater issue at play here that is beyond the scope of this review and this is the desire of the Federal Government to bypass the State and directly influence Local Councils. Unless the State defines the role of the Councils and regulates to restrict activity to that of the district they are responsible for the risk is the States authority and control will be eroded and the future of this State will become greatly influenced by those on the East Coast.

Yours Sincerely
Vincent Maxwell